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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,284	07/03/2003	Robert D. Hutchison	11-931	5800

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT PAPER NUMBER

1771

DATE MAILED: 04/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/612,284

Applicant(s)

HUTCHISON, ROBERT D.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-20 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>02/06</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Amendment*

1. Applicant's amendment filed February 6, 2006, has been entered. Claims 1 and 15 have been amended as requested. Claim 21 has been canceled. Thus, the pending claims are 1-20.
2. Said amendment is sufficient to withdraw the 102 rejections set forth in sections 2-4 of the last Office Action. Specifically, applicant has amended claim 1 to include the subject matter of cancelled claim 21. Since claim 21 was not included in the 102 rejections set forth in sections 2-4, said rejections are overcome. Additionally, obviousness rejections are not made since modifying the cited prior art (*101 Weaves*, Endrenyi, and Hong) to have the claimed yarns that are not visually distinguishable before being soiled would destroy the intent of said prior art. For example, the yarns of *101 Weaves* and Endrenyi are different colored yarns that create a desired pattern. Modification of said yarns to being indistinguishable before soiling would destroy said pattern. Similarly, said modification of the Hong invention would destroy the artificial fur having long and short pile.
3. Regarding the Hagen (US 5,413,857) rejection set forth in section 5 of the last Office Action, applicant traverses on the grounds that the reference does not teach separate yarns (i.e., hollow fiber yarns and trilobal fiber yarns) but rather yarns that are a blend of hollow and trilobal fibers (Amendment, paragraph spanning pages 6-7). In the rejection, the examiner had previously argued the claim language did not exclude the presence of the both fibers being in the same yarn. This statement was incorrect since applicant recites "providing the fabric with

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soiling-hiding yarns and at least one soiling-prone yarn.” In other words, the claim recites two types of yarns not just two types of fibers within the yarns. Also note product claim 15 recites a fabric having predominantly one type of yarn, not one type of fiber. As such, the rejection set forth in section 5 of the last Office Action is also hereby withdrawn. An obviousness rejection is not made since modifying Hagen to provide two distinct yarns would destroy the intent of the invention wherein the yarns are of blended fibers.

4. An updated search of the prior art has produced new art for which to base a rejection upon. Additionally, a new 112, 2<sup>nd</sup> rejection is set forth below.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 5 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. The claims limit the two types of yarns to being visually indistinguishable before soiling. However, claims 5 and 14 limit said yarns to being made from hollowfil and multilobal fibers, respectively. Since one can ‘visually distinguish’ a hollowfil fiber from a multilobal fiber, said claims are indefinite. Note applicant’s own Figures 3-5, which show differences in structure between the two yarns.

*Claim Rejections - 35 USC § 102*

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 6, 8-13, 15, 19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,961,243 issued to Barber.

Barber discloses a carpet cleaning pad comprising a blended yarn tufted into a primary backing (abstract). the blended yarn is comprised of three or more different individual yarns that are plied together (abstract, col. 2, lines 21-24, and Figure 2). Note Barber teaches the three individual yarns are “woven together by conventional yarn weaving means” (col. 2, lines 21-24). Since yarns are not technically “woven” together to form blended yarns, the examiner interprets this teaching to mean that the three yarns are plied to form a plied or cabled yarn as shown in Figure 2. It is asserted that one of ordinary skill in the textile arts would readily understand that Barber’s teaching to “weaving” blended yarns is equivalent to plied yarns.

The first yarn, which picks up and retains dirt, is preferably made of wool or acrylic fibers, although polyester fibers may also be employed (col. 2, lines 30-55). The second yarn, or the yarn that forms the backbone of the blended yarn, is made of nylon fibers (col. 2, lines 56-63). The third yarn is made of rayon fibers which has good moisture retention and picks up and retains dirt (col. 2, lines 64-67). The blended yarn may comprise 5-60% of the first yarn (i.e., acrylic or wool), 30-70% of the second yarn (i.e., nylon), and 5-60% of the third yarn (i.e., rayon) (col. 2, lines 48-49 and 62-63 and col. 3, lines 10-11). The blended yarn provides better

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capillary attraction of dirt into the pad (col. 3, lines 12-15). The yarns are preferably not dyed (col. 3, lines 15-17).

Since Barber teaches the first and third yarns have different soiling properties than the second yarn, it is asserted that the present relative limitations to “soiling-hiding” and “soiling-prone” yarns are met. In other words, the yarns have different soiling characteristics relative to one another which meets applicant’s limitations. Note applicant’s disclosure that said terms are relative to each other (specification, page 6, section [0015]). Additionally, since the yarns are not dyed, it is asserted that the limitation that the yarns are visually indistinguishable from one another before soiling is met. Therefore, claims 1, 6, 8-12, and 15 are anticipated by the Barber patent.

Regarding claims 13, 19, and 20, which limit the fabric to a carpet, it is asserted that the term “carpet” is merely descriptive of an intended use of a textile material. It does not positively limit the structure in any way. As such, said claims are also rejected. Even if the term “carpet” is given an *implied* meaning of a conventional carpet construction (i.e., pile yarns secured into a primary backing and a backcoat), it is noted that Barber teaches pile yarns tufted into a primary backing and a backcoat (col. 3, lines 62-64). Therefore, claims 13, 19, and 20 are also anticipated by the cited Barber patent.

### ***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 2-5, 14, and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Barber patent.

While Barber fails to teach the use of hollow or multilobal fibers, it is asserted said claims are obvious over the prior art. Specifically, hollow fibers are well-known in the art as being capable of attracting and “hiding” dirt within its hollow configuration. Additionally, multilobal fibers, such as trilobal, are well known in the art as retaining soiling better than fibers having circular cross-sections. Applicant is hereby given Official Notice of these facts. The examiner notes that the facts asserted to be common and well-known are capable of instant and unquestionable demonstration as being well-known. To adequately traverse such a finding, applicant must specifically point out the supposed errors in the examiner’s action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. Thus, it would have been readily obvious to one of ordinary skill in the art to modify the Barber patent by employing hollow and/or trilobal fibers in order to enhance the cleaning capability of the carpet cleaning pad. Therefore, claims 2-5, 14, and 16-18 are rejected as being obvious over the prior art.

***Allowable Subject Matter***

12. Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. It would not be obvious to modify the Barber invention so that a plurality of soiling-prone yarns or groups thereof are spaced from one another in at least selected

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areas of the fabric. Such a modification would destroy Barber's intent of a blended or plied yarn. Therefore, claim 7 contains allowable subject matter.

***Conclusion***

13. The art made of record and not relied upon is considered pertinent to applicant's disclosure.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CHERYL JUSKA  
PRIMARY EXAMINER

cj  
April 7, 2006